REMARKS

Claims 66-72 have been amended. Claims 1-72 remain pending. Reconsideration is respectfully requested in light of the following remarks.

Section 121 Restriction:

In the Office Action dated September 22, 2006, the Examiner presented a restriction requirement requiring election of one of the following two inventions as defined by the Examiner:

> A. Claims 1-47 and 67-72 are drawn to a method and medium for configuring a plurality of software components of an intelligent device, classified in class 709, subclass 220.
> B. Claims 48-72 are drawn to the intelligent device itself, classified in class 709, subclass 201.

Based on the definitions of Invention A and Invention B as provided by the Examiner, Applicant assumes that the Examiner intended to list claims 1-47 and 66-72 as associated with Invention A, and claims 48-65 as associated with Invention B.

Applicant elects Invention A (claims 1-47 and 66-72), as defined by the Examiner, **with traverse.** Applicant traverses the restriction requirement for at least the following reasons.

The Examiner contends that Inventions A and B "are related as subcombinations disclosed as usable together in a single combination." However, Inventions A and B are not *disclosed* as *subcombinations* usable together *in a single combination.* For example, embodiments of the method of claim 1 (Invention A) can be carried out on embodiments of the device of claim 48 (Invention B). Embodiments of claims 1 and 48 are clearly not described in Applicants' disclosure as separate subcombinations. The Examiner has misapplied the concept of subcombinations usable together in a single combination. Subcombinations are two separate components of a single combination that do not overlap in scope. For example, a gear mechanism and a seat bracket would be two

separate subcombinations that are usable together in a single bicycle combination. Invention A and invention B, as defined by the Examiner, do not have the relationship of subcombinations disclosed as usable together in a single combination. Instead, claim 1 recites a method for generating a batch configuration document for an intelligent device, and claim 48 recites an intelligent device configured to implement such a method. Claim 1 and claim 48 clearly cannot be characterized as being restricted to separate subcombinations. Although claims 1 and 48 may certainly vary in scope from one another, the Examiner has clearly mischaracterized Applicants' claims as requiring separate subcombinations usable together in a single combination. Thus, the restriction requirement is improper.

Furthermore, a proper restriction requirement under M.P.E.P. 806.05(d) requires that the subcombinations "do not overlap in scope". There is clearly overlap in scope between the claims of invention A and the claims of invention B. Applicants are by no means asserting that the scope of the claims of invention A is identical to the scope of the claims of invention B. In fact there are clearly differences in scope between the claims. However, claims of invention A do have some overlap in scope with claims of invention B. For example, from even the most cursory glance, it is readily apparent that the functionality of the program instructions executable in the device of claim 48 is similar to and overlaps in scope with the actions of the method recited in claim 1. Thus, claim 1 and claim 48 do not recite separate subcombinations that do not overlap in scope. Since, claims of invention A have some overlap in scope with claims of invention B, restriction cannot be required under M.P.E.P. 806.05(d). Therefore, the Examiner's restriction requirement is improper.

Moreover, according to M.P.E.P. 806.05(d), to state a proper restriction requirement for subcombinations usable together in a single combination, "[t]he Examiner must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination." M.P.E.P. 806.05(d) also states that "the burden is on the Examiner" to make this showing. The example given by the Examiner is that invention A has separate utility of "a method and medium for configuring a plurality of

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software components of an intelligent device" and invention B has a separate utility of "an intelligent device itself." However, the Examiner has simply repeated his definitions of Invention A and Invention B, not stated examples of separate utilities. Per Applicant's disclosure, embodiments of the method for configuring a plurality of software components of an intelligent device (Invention A) can clearly be implemented on embodiments of the intelligent device (Invention B). Likewise, per Applicant's disclosure, embodiments of the intelligent device of Invention B can perform embodiments of the method of Invention A. Thus, the Examiner has given examples of utilities that apply for both Invention A and Invention B. The Examiner clearly has not shown a separate utility for one Invention that does not apply for the other. Therefore, the Examiner has failed to state a proper restriction requirement.

Another shortcoming of the Examiner's restriction requirement is in regard to the requirement of M.P.E.P. § 808 for the Examiner to also show "reasons why there would be a serious burden on the examiner if restriction is not required". In regard to this requirement, the Examiner states that the inventions have acquired a separate status in the art and would require non co-extensive searches. The Examiner relies on different classifications of the inventions to justify these reasons. However, the Examiner's reliance of different classifications to show a separate status in the art and different searches is misplaced because the purported classifications are inaccurate and clearly not separate for the two claim groups. For example, the Examiner states that Invention A is classified as class 709, subclass 220, and that Invention B is classified as class 709, subclass 201. However, these classifications could both be applied to all of the claims, and are thus not separate for the two groups. According to the Manual of Classification, the definition of class 709, subclass 220 is for network computer configuring. The definition for class 709, subclass 201 is distributed data processing. However, both Invention A and Invention B pertain to batch configuration of components on a device. Network computer configuring (subclass 220) or distributed data processing (subclass 201) is neither required nor excluded for either Invention A or B. Thus, the Examiner's classifications are neither accurate nor separate for Invention A and Invention B. Since the purported classifications are not very accurate and could actually relate to all of the

claims, the Examiner clearly cannot rely upon these flawed classifications to establish "a serious burden on the examiner if restriction is not required." *See* M.P.E.P. § 808. Since the Examiner's has failed to establish a "serious burden on the examiner if restriction is not required", Applicants' assert that the Examiner has not established all of the necessary elements of a *prima facie* restriction requirement as required by M.P.E.P. § 808. Therefore, the Examiner's restriction requirement must be withdrawn.

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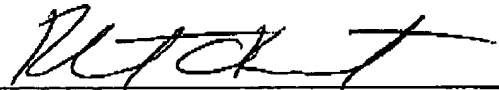
CONCLUSION

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-78701/RCK.

Also enclosed herewith are the following items:

☐ Return Receipt Postcard
☐ Petition for Extension of Time
☐ Notice of Change of Address
☐ Other:

Respectfully submitted,

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Reg. No. 39,255
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Date: October 23, 2006

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